

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

BMS SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS PLAINTIFF'S NOTICE CONCERNING
RECOMMENDATION ON USE OF EXCESS SETTLEMENT
FUNDS IN THE PROPOSED BMS SETTLEMENT**

On November 29, 2010, the Court issued an Order for Final Consideration of the BMS Settlement (Docket No. 7313). As part of the schedule set for finalizing notice and completion of the settlement approval process, the November 29, 2010 Order directed Class Counsel to provide the Court "recommendations on use of any excess settlement funds" on February 21, 2011. Order at ¶4. The Order also specified that "the Court may thereafter issue, prior to the final approval hearing date, an order to show cause why a particular use of excess funds is not appropriate." *Id.*

The deadline for consumer class members to return initial notice cards was January 31, 2011. As of this date, Rust Consulting, Inc. has received approximately 16,500 responses from potential class members. Based on this response and the response from TPP Class members, Class Counsel expect to distribute all of the proceeds of the Proposed BMS Settlement and do not anticipate the existence of excess settlement funds or the need for *cy pres*. Accordingly, Class Counsel make no recommendation on the use of excess settlement funds.

Pursuant to the November 29, 2011 Order, Class Counsel will submit its next regularly-scheduled Status Report concerning the status of the Track Two, BMS and AZ Settlements on March 1, 2011.

DATED: February 18, 2011

By /s/ Steve W. Berman

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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFF'S NOTICE CONCERNING RECOMMENDATION ON USE OF EXCESS SETTLEMENT FUNDS IN THE PROPOSED BMS SETTLEMENT**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on February 18, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman